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Conduct and Discipline Manual

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Appendix - Guidance on Corrective Discipline

- 1. PURPOSE. This Manual prescribes policies governing employee conduct and corrective disciplinary actions in the Environmental Protection Agency.
- 2. REFERENCES.
 - a. Federal Personnel Manual, Chapter 751, "Discipline".
 - b. EPA Order 3120.3A, dated March 18, 1980, "Employee Alcoholism and Drug Abuse Program".
 - c. FPM letter 751-2, dated February 4, 1983, "Taking Action on the Problem Employee".
 - d. FPM letter 751-3, dated October 6, 1983, "Suggested Table of Actions for Correcting Employee Misconduct".
 - e. EPA Order 3110.6B, dated July 29, 1985. "Adverse Actions".
- GENERAL. The Environmental Protection Agency requires all its employees to adhere to the Agency Regulations on Employee Responsibilities and. Conduct (40 CFR Part-3) and to maintain levels of behavior and efficiency which conform to the highest ethical standards and promote the best interests of EPA and the Federal Service. Likewise, all managers and supervisors are responsible for maintaining a climate of constructive discipline within their organizations by good example and practice, clear instruction, fair and equal treatment of all. employees, anti firm and decisive leadership.
- POLICY. It is EPA Policy that primary emphasis be placed on preventing situations requiring disciplinary actions through effective employee-management relations and that when work performance and/or conduct. are not maintained at acceptable levels, constructive corrective action be taken by responsible supervisors on a timely basis.
- DETERMINING CORRECTIVE ACTION TO BE TAKEN. All EPA supervisors and management officials are responsible for taking appropriate corrective actions for which they have been delegated authority and for recommending to higher level officials disciplinary action considered appropriate in other cases. Any supervisor or management official with supervisory duties may take informal corrective actions (paragraph 6 below) and issue official written reprimands (subparagraph 7a below) unless these authorities have been specifically withheld. The following principles will be observed in the exercise of both formal and informal corrective actions.
 - a. The action taken must be consistent with the precept of like penalties for like offenses, with

- mitigating or aggravating, circumstances taken into consideration. The action taken should be fair and equitable; and if a penalty is warranted, it should be no more severe than judgment indicates is required to correct the situation and maintain discipline. The Appendix to this Order should serve as a guide to appropriate actions for most offenses.
- b. No action may be taken against an employee on any basis prohibited by 5 U.S.C. 2302, "Prohibited Personnel Practices".
- INFORMAL CORRECTIVE ACTIONS. When a supervisor decides that corrective action is necessary, he or she should first consider informal measures which are non-punitive in nature but which will adequately instruct offending employees and remedy problem situations. Supervisors are urged to review the facts of individual cases and consider one or more of the following informal measures before formal corrective actions which are recorded in an employee's official personnel folder, are used.
 - a. Closer Supervision. The correction of employee misconduct may require nothing more than closer supervision. The supervisor should inform the employee of the reason for the closer supervision and encourage the employee to cooperate to remedy the problem.
 - b. Oral Admonishment. The most common corrective action is usually the face-to-face session between employee and supervisor. Such discussions should be conducted in private to avoid undue embarrassment to the employee. The tone should be informal and relaxed. The supervisor should advise thee employee of the specific infraction or breach of conduct and encourage the employee to explain his or her side of the matter or offer any comment he or she wishes to make. After listening to the employee, the supervisor must decide if he or she should continue. If still warranted, the supervisor should administer the admonishment and outline what steps he or she feels are necessary to preclude its recurrence.
 - c. Written Warnings. A written warning should describe exactly what improper actions the employee is engaging in, outline positive corrective steps, and state what penalty might result if the actions continue. A copy of the written Warning is not placed in the employees official personnel folder, but a copy should be retained in the supervisor's personal files. Written warnings are often effective in influencing those employees who require a tangible expression of a supervisors views. This kind of corrective action lacks the give and take of the oral interview and should usually be employed only if the supervise has already tried an oral warning or feels that it would be inappropriate.
- FORMAL DISCIPLINARY ACTIONS. A formal disciplinary action may be- an official written reprimand, a suspension, a change to a lower grade, or removal from the civil service. Records of formal disciplinary actions become a part of the employee's official personnel folder. Supervisors should initiate such actions only after coordinating any proposed action with their servicing Personnel Offices. Detailed information concerning formal disciplinary actions is contained in the paragraphs below.
 - a. Official Written Reprimand. An official written reprimand is a letter or memorandum issued to an employee by an authorized supervisor or management official to correct an employee's conduct, attitude, work habits, or other factors which have a relationship to his or her employment, and to maintain the efficiency? discipline, and morale of the work force. It is filed in the employee's official personnel folder for a period of up to two years. This type of disciplinary action may be used for a situation or offense which is (1) serious and warrants more than an informal measure, or (2) in the case of repeated infractions of a minor nature. (It should not be confused with the written warning discussed. in subparagraph 6c. above.)

Before issuing an official reprimand the supervisor must fully discuss the incident with the employee to permit the employee to present his or her side of the situation. If after the employee presents his or her views, the supervisor considers a reprimand be warranted, the supervisor should prepare the written reprimand in accordance with subparagraph 7a(1) below. (See sample Figure 1.)

- 1. Contents. The following information shall be incorporated in, the body of an official reprimand:
 - a. A description of the facts in Sufficient detail to assure that the employee will fully understand the violation, infraction, misconduct, or other action or omission for which he or she is being reprimanded. The supervisor should include in the reprimand specifics as to times, places, dates, and events and refer to the discussion mentioned in subparagraph 7a above.
 - b. A statement that the document is an official reprimand and that it will be made a matter of record and filed in the employees official personnel folder for a period not to exceed two years.
 - c. A restatement of any former incidents if the reprimand is a follow-up of previous offenses and the action is a continuation of constructive discipline. If the employee failed to take any remedial action previously stipulated, that fact should also be included.
 - d. A warning that any future similar occurrence or other misconduct may result in more severe disciplinary measures.
 - e. Assistance which is available to the employee for remedial purposes or as a means of helping him or her overcome the deficiency and avoid future recurrence, and any action required of him or her.
 - f. A statement that the employee may file a grievance under the Agency's Administrative Grievance System contained in EPA Order 3110.8A or under an applicable negotiated grievance procedure, whichever applies.
- 2. Placement and Retention of Reprimand in Official Personnel Folder. The supervisor shall retain a copy of the reprimand and forward one copy to the servicing Personnel Office for filing in the employee's official personnel folder. If decided later through the grievance procedure that the reprimand is not warranted, the reprimand must be withdrawn by the Personnel Office from the personnel folder and the employee notified by the Personnel Office of such action. Once the reprimand is removed, it shall be destroyed and regarded as never having occurred. Reference may not be made to the withdrawn action as a previous official action, and the reprimand may not be used or relied upon to support a subsequent action. Unless withdrawn earlier, a written reprimand shall be removed from the official personnel folder no later than two years from the date of issuance. A reprimand which is removed from the. PFC after two years may be referred to in a subsequent adverse action.
- b. More Severe Disciplinary Actions. The following corrective actions are considered adverse personnel actions and require that the procedures in EPA Order 3110.6B, Adverse Actions, be followed. Supervisors must consult with their servicing Personnel Office in advance of any proposal to take an adverse action against an employee.
 - Suspension. Suspension is placing an employee in an involuntary non-duty and non-pay status. Since suspensions result in a loss of productive capacity to the EPA and represent a financial loss to employees, they should be imposed as disciplinary actions only after admonitions or reprimands have been used without success or when the offense requires a more stringent corrective action.
 - 2. Reduction in Grade. While most actions to reduce compensation and most changes to

- lower grade will not be for the purpose of disciplining employees, a change to lower grade for cause is a valid disciplinary, penalty. There may be instances in which the employee's conduct warrants demoting him or her from the position but not removing him or her from the service.
- 3. Removal. Actions to remove employees from their positions are appropriate when an employee's misconduct, delinquency, carelessness, or negligence, are such that a separation from the service must be effected in order to promote the efficiency of the service. Fighting, repeated or prolonged leave abuse, theft, falsification of official documents, repeated infractions involving less severe misconduct, or major violations of Agency codes of conduct are examples of conduct which may require removal from the Federal Service.
- c. DISCUSSIONS WITH EMPLOYEES. Where a labor organization has been accorded exclusive recognition, it has the right to be represented at formal discussions between supervisors or management officials and employees concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the particular unit of recognition. Individual counseling sessions concerning individual problems, actions or work performance conducted, by a supervisor with a unit employee are not formal discussions, and there is no requirement that the union be given the opportunity to be represented. However, if the situation involves, questioning that the employee reasonably believes may result in disciplinary action against him or her, the employee may request union representation [5 U.S.C., 7114(a)(2)(B)]. Any questions about meetings with employees and invitations to exclusive union representatives to attend meetings should be discussed with the appropriate servicing Personnel Office prior to holding such meetings.
- d. SPECIAL CONSIDERATIONS: ALCOHOL, DRUGS, AND OTHER PERSONAL PROBLEMS. In discussing a conduct. or, performance problem with an employee, he or she may introduce a problem with alcohol or drugs or a personal situation which is affecting conduct or performance. In other cases, a supervisor may only suspect the existence of alcohol or drug abuse or a personal problem as the reason for a deficiency. In either of the above, situations, supervisors should immediately contact their servicing Personnel Office for guidance and advice on the appropriate steps. In cases of alcohol and drug problems, the Agency is specifically required to offer rehabilitative assistance. Policies and procedures related to the Agency Employee Alcoholism and Drug Abuse Program are contained in EPA Order 3120.3A, dated March 18, 1980.

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Appendix - Guidance on Corrective Discipline

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EPA ORDER 3120.1 9/20/85

Determining Appropriate Penalties

The Merit Systems Protection Board. In Douglas vs. Veterans Administration, MSPB Docket No. AT075299006 (April 10, 1981), has outlined a number of factors that should be considered in determining the appropriateness of a penalty. While not exhaustive, those generally recognized as relevant include the following:

- 1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical, or inadvertent, or was commit maliciously or for gain, or was frequently repeated:
- 2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and the prominence of the position;
- 3. The employee's past disciplinary record:
- 4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors confidence in the employee's ability to perform assigned duties:
- 6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- 7. Consistency of the penalty with any applicable agency table of penalties;
- 8. The notoriety of the offense or its impact upon the reputation of the Agency;
- 9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10. Potential for the employee's rehabilitation;
- 11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- 12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Not all of these factors will be pertinent in every case, and frequently in an individual case some of the pertinent factors will weigh in the employee's favor while others may not, or may even constitute aggravating circumstances.

Table of Offenses and Penalties

This table should be used as a guide by supervisors in order to facilitate comparable action throughout the Agency, in comparable cases. While penalties for offenses will usually fall within the ranges indicated in unusual circumstances greater or lesser penalties may be applied unless

otherwise provided by law. The list of offenses in this table is not meant to be all inclusive. For offenses not listed, penalties may be imposed which are consistent with penalties listed in the table for offenses of comparable gravity. Days always means calendar days.

Nature of Offense	1st Offense	2nd Offense	3rd Offense
l. Attendance related offenses			
a. Unexcused tardiness. This includes delay in reporting at the scheduled starting time, returning from lunch and returning after leaving work station on official business. 4th offense may warrant 5-day suspension to removal.	Oral admonishment	Oral admonishment to	Oral admonishment to 5-day suspension
	manrimana to 1.	1-day to 14-day	5-day suspension to removal
c. Failure to follow established leave procedures	Written reprimand to 5- day suspension	H	5-day suspension to removal
2. Breach of safety regulations or practices			
a. Where imminent danger to persons or property is not involved.	Written reprimand to 1- day suspension	I-day to 14-day suspension	5-day suspension to removal
b. Where imminent danger to persons or property is involved. "Persons" includes "self". Penalty depends on seriousness of injury or potential injury and extent or potential extent of damages to property.		14-day suspension to removal	Removal
3. Breach of security regulations or practic	e.		
a. Where restricted information is not compromised and breach is unintentional.	Oral admonishment to 5-day suspension	1 *	5-day suspension to removal
b. Where restricted information is compromised and breach is unintentional.	Written reprimand to removal	14-day suspension to removal	Removal
c. Deliberate violation	30-day suspension to removal	removal	

(1) Unauthorized possession of alcoholic	Written		14-day
beverages on Government premises or in	reprimand to 5-	5-day to 14-day	
duty status.	day suspension	suspension	suspension to removal
(2) Unauthorized use of alcoholic beverages	Written		30-day
while on Government premises or in duty	reprimand to 14-	10-day to 30-day	
status.	day suspension	suspension	suspension to
	Written	14-day	removal
(3) Reporting to or being on duty while	reprimand to 30-		D 1
under the influence of alcohol.	day suspension	suspension to removal	Removal
(4) Sale or transfer of an alcoholic beverage	day suspension	removai	
while on Government premises or in a duty	Written		Ì
status or while any person involved is in a	reprimand to	Removal	
duty status.	removal		
b. Drug-related:			
(1) Unauthorized possession of a drug or	1	14 -1	<u> </u>
controlled substance while on Government	5-day to 30-day	14-day	
premises or in a duty status.	suspension	suspension to	Removal
(2) Unauthorized use of a drug or controlled	14 day	removal	
substance while on Government premises or	14-day	30-day	L .
in duty status.	suspension to removal	suspension to	Removal
(3) Reporting to or being on duty while		removal	
ander the influence of a drug or controlled	30-day	<u></u>	
substance.	suspension to	Removal	
(4) Sale or transfer of a drug or controlled	removal		
substance while on Government premises or			
in a duty status or while any parent involved	Removal		
n a duty status or while any person involved s in a duty status.			
5. Making false, malicious or unfounded			
statements against coworkers, supervisors,			
subordinates or Government officials	Written	14-day	30-day
which tend to damage the reputation or	reprimand to		suspension to
undermine the authority of those	removal		removal
concerned.			
	Oral	Written	5 days
5. Unhygienic practices which annoy or	admonishment to		5-day
eopardize the health of others.	5-day suspension	day suspension	suspension to
7. Conduct which is generally criminal.	Written		removal
nfamous, dishonest, immoral or		30-day	uamaria!
notoriously disgraceful.		suspension to removal	removal
B. Abusive or offensive language, gestures,	Written		20.1
or other conduct. (Also see "Discourtesy", 9	reprimend to 10		30-day
		to removal	suspension to
	day suspension		removal
). Discourtesy to the public	Oral		10-day
	admonishment to		suspension to
	5-day suspension	day suspension	removal

	*** *	• 4 1	
		14-day	
			removal
		removal	
	Written	1	
		removal	
	removal		
	reprimand to removal	N-AGV CHCHANCIAN!	14-day suspension to removal
2. Use of official authority or information for private gain	14-day suspension to removal	removal	
3. Failure to obtain required clearance of an official speech or article.	Written reprimand to 5- day suspension	5-day to 14-day suspension	I4-day suspension to removal
4. Engaging in private business activities	Written	20-day	
which result in or create the appearance	reprimand to		removal
of a conflict of interest	removal	removal	
15. Misuse of official Government credential	Written reprimand to removal	5-day suspension to removal	l-day suspension to removal
16. Deliberate misrepresentation,	Written		14-day
falsification, concealment or withholding	reprimand to	5-day suspension	suspension to
of a material fact, or refusal to testify or	removal	to removal	removal
cooperate in an official proceeding.	a villo v di		
17. Loss or damage to Government property, records, or information (Also see 44.) Penalty depends on value of property or extent of damage, and degree of fault attributable to the employee.	Oral admonishment to removal	Written reprimand to removal	5-day suspension to removal
18. Offenses relating to fighting. Penalty depends on such factors as provocation defensive or offensive in nature	on, extent of injuri	es, and whether ac	etion was
deterisive of offerisive in nature	Written	14-day	30-day
	I AA T ITTCII		suspension to
a. Threatening or attempting to inflict bodily	reprimand to 14-	suspension to	bashension to
		suspension to removal	removal
a. Threatening or attempting to inflict bodily harm.	reprimand to 14- day suspension Written	removal 30-day	removal
a. Threatening or attempting to inflict bodily	reprimand to 14- day suspension	removal	

c.Hitting, pushing, or other acts against another causing injury.	l 4-day suspension or removal	removal	
19. Delay in carrying out or failure to carry out instructions in a reasonable time.	Oral admonishment	Written reprimand to removal	5-day suspension to removal
20. Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order.	Written reprimand to 14- day suspension	5-day suspension to removal	removal
21. Sleeping while on duty.			
a. Where no danger to persons or property is involved.	Oral reprimand to 1-day suspension	Written reprimand to 5- day suspension	5-day suspension to removal
b. Where danger to persons or property is involved.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
22. Negligent performance of duties			
a. Where damage or waste to Government property is insubstantial.	Oral admonishment to 1-day suspension	reprimand to 5-	5-day suspension to removal
b. Where damage or waste to Government property is substantial	Written reprimand to 10-day suspension	5-day suspension to removal	I4-day suspension to removal
23. Offenses related to gambling			
 Participating in an unauthorized gambling activity while on Government premises or in duty situations. 		reprimand to 5-	10-day suspension to removal
b. Operating, assisting, or promoting unauthorized gambling activity while on Government premises or in a duty status or while others involved are in a duty status.	Written reprimand to removal.	removal	4
24. Unauthorized canvassing, soliciting or peddling on EPA premises.	l5-dav i	reprimand to 14-	10-day suspension to removal
25. Participating in a strike, work stoppage, slowdown, sickout, or other job action.	removal		
	admonistiment	reprimand to 5-	5-day suspension to removal
27. Forging or falsifying official Government records or documents.	Written reprimand to removal	removal	
Elithafiirec trom cubardinatas		20-day suspension to	removal

	removal	removal	1
20 11 41 1 1 1 1 1 1 1 1	Written	30-day	
29. Unauthorized carrying of fire arms	reprimand to	suspension to	removal
while on EPA premises.	removal	removal	
	Written		30-day
30. Conducting personal affairs while in	reprimand to 1-	2-day to 10 day	suspension to
duty status.	day suspension.	suspension.	removal
	Written	10-day	Z CITIO V di
31. Falsifying time and attendance records	reprimand to	suspension to	removal
for oneself or another employee.	removal	removal	removai
	Written		DO 4
12.5		14-day	30-day
32. Sexual harassment.	reprimand to	suspension to	suspension to
	removal	removal	removal
33. Discrimination based on race, color,	Written	14-day	30-day
sex, religion, national origin, age, marital	reprimand to	suspension to	suspension to
status, political affiliation, or handicap.	removal	removal	removal
34. Interference with an employee's			
exercise of, or reprisal against an	Written	14-day	30-day
employee for exercising, a right to grieve,	reprimand to	suspension to	suspension to
appeal, or file a complaint through	removal	removal	removal
established procedures.			
35. Reprisal against an employee for			
providing information to an Office of			
Inspector General (or equivalent) or the	Written	14-day	30-day
Office of special Counsel, or to an EEO	reprimand to	suspension to	suspension to
investigator, or for testifying in an official	removal	removal	removal
proceeding.			
36. Reprisal against an employee for			
exercising a right provided under 5 U.S.C.	Written	14-day	30-day
	reprimand to	suspension to	suspension to
Chap 71 (governing Federal labor-	removal	removal	removal
management relations).			
37. Finding by MSPB of refusal to comply	137.74	1.	
with MSPB order of violation of statute		d to removal, deba	
causing issuance of special counsel	Federal Service n	ot to exceed 5 year	rs, or assessment
complaint. [5 U.S.C. 1206 (g) (1) and 1207	of civil penalty no	ot to exceed \$1,00	υ.
(b)			
38. Directing or rendering services not	removal		
covered by appropriations. [5 U.S.C. 3103]			
39. Prohibited political activity.			
a. Violation of prohibition against political			
contributions. [5 U.S.C. 7323]	removal		
b. Violation of prohibition against			
campaigning or influencing elections. [5	30-day suspensio	n to removal	
U.S.C. 7324 and 7325]			
40. Failure to deposit into the Treasury			
money accruing from lapsed salaries or	removal		
from unused appropriations for salaries.			
he ore seconds while oby twestons son settle 1031	1		

[5 U.S.C. 5501]	1		
41. Soliciting contributions for a gift for a			
superior; making a donations as a gift to a			
superior; accepting a gift from an	removal		
employee receiving less pay. [5 U.S.C.	Cinovai		
7351]			
42. Action against national security. [5 U.S.C. 7532]	Suspension to removal		
43. Willfully using or authorizing the use			
of a government passenger motor vehicle	20 4		
or aircraft for other than official	30-day suspension to removal		
purposes. [31 U.S.C. 1344]			
44. Willful concealment, removal,			
mutilation or destruction of a public	removal		
record. [18 U.S.C. 2071]			
45. Scientific misconduct			
Scientific activities include research and deve	elopment technics	l and regulatory of	innort
monitoring, data collection, review and interp	retation of technic	ral studies and assi	appurt, ecoment of bealth
and environmental risk.	returned of technic	car stadies and assi	cosment of nearth
EPA's scientific activities include the review	and interpretation	of technical studie	se and arragement
within program offices. The nature of the task	c not the job class	ification of the ind	is and assessmem lividual
performing the work, determines whether a p	articular activity i	s "science" Scient	ific micconduct
does not extend to the interpretation of accura	ately stated scienti	fic information ou	en when such
interpretation is not widely accepted.	atory stated selection	ne miormation, ev	en when such
	Written	30-day	
a. Fabrication or knowing falsification of	reprimand to	suspension to	removal
data, research procedures, or data analysis.	removal	removal	removai
b. Plagiarism or other misrepresentation, in	Contoral	CHIOVAL	
proposing, conducting, reporting, or		,	
reviewing research or other scientific	Written	30-day	
activities. This includes the deliberate	reprimand to	suspension to	removal
misstatement or omission of material	removal	removal	
information.			
	20 4		
c. Ordering, advising, or suggesting a	30-day	Demotion to	,
Supplicate cagage in scientific misconduct	suspension to removal	removal	removal
46. Resources Management	iciliovai		
Initiating and deciding officials about the annual	anna ala ara ara ara		
Initiating and deciding officials should be awane negligence are not intended to be actionable.	are that actions tak	ten in good faith ai	nd without
		<u> </u>	
a. Violation of applicable Federal (e.g.			
OMB, Treasury, GSA, EPA) resources	*** ***	***	
management laws, rules, or regulations by an		1	30-day
	to 3-day		suspension to
	suspension	day suspension	removal
laws, rules, or regulations is required by the position.			
b. Advising or ordering a subordinate to			
violate applicable Federal (e.g., OMB,	3 to 14-day	15-day	

Treasury, GSA, EPA) resources management laws, rules, or regulations.	suspension	suspension to removal	removal
c. Managing an organization where Federal (e.g. OMB, Treasury, GSA, EPA) resources management laws, rules, or regulations have been violated.			
Where the manager should have had knowledge of the violation(s)	to 3-day	, .	30-day suspension to removal
2. Where the manager had actual knowledge of the violation(s)	Written letter of reprimand to 14-day suspension	,	removal
d. Violation of Federal (e.g., OMB, Treasury, GSA, EPA) resources management laws, rules, or regulations by an individual occupying a position where knowledge of such resources management laws, rules, or regulations is not required by the position (e.g. unauthorized procurement actions.)	Oral warning to	Written warning to 3-day suspension	3-day suspension to removal
e. Any resources management decision or action or use of official authority or influence that results in a violation of the Standards of Ethical Conduct for Employees of the Executive Branch at CFR Part 2635 or in violation of the Federal Acquisition Regulation at 48 CFR Part 3.104.	to 3-day	Written letter of reprimand to 30- day suspension	30-day suspension to removal

NOTE: Any suspension action taken against a member of the Senior Executive Service must be for a minimum of 15 days. See Section 5 U.S.C. 7541 - 7543 and 5 CFR Part 752, Subpart F.

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